

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: KUUSINEN, Jarmo et al.

Title: MANAGING A PACKET SWITCHED CONFERENCE CALL

Appl. No.: 10/613,986

International Filing Date: 7/4/2002

371(c) Date: 7/3/2003

Patent No.: 7,483,400

Grant Date: 1/27/2009

Examiner: Lisa Hashem

Art Unit: 2614

Confirmation Number: 4362

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 1/27/2009 as U.S. Patent No. 7,483,400.

The Patent Office determined that the patent was entitled to 1050 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1607 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1607 days

(b) Total Applicant delay: 0 days

Final PTA Determination: 1607 days

Applicants therefore respectfully request that the patent be accorded 1607 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By 

Date March 4, 2009

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Docket Number: 088245-0194
 Application Number: 10/613986
 Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Application Filing Date	07/03/2003	0		
Notice to File Missing Parts	10/02/2003	91		
Response to Notice to File Missing Parts	11/07/2003	127		
14 month From Application date	09/03/2004	428		
3 Year Period Starts	07/03/2006	1,096		
Non-Final Office Action	07/17/2007	1,475	(1047)	
Non-Final Office Action Rsp. Rcv'd at PTO	10/11/2007	1,561		
Final Office Action	01/11/2008	1,653		
Final Office Action Response Received at PTO	03/10/2008	1,712		
Non-Final Office Action	04/17/2008	1,750		
Non-Final Office Action Rsp. Rcv'd at PTO	05/16/2008	1,779		
Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	09/16/2008	1,902		
Notice of Allowance	09/19/2008	1,905	(3)	
Issue Fee Paid	12/18/2008	1,995		
Patent Grant Date	01/27/2009	2,035	(939) 1607	0
		Totals:	1,607	0
		PTA:	1,607	

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